



REPUBLIC OF KENYA



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Kamunyi v Inoi Farmers Co-operative Society Ltd (Miscellaneous Cause E009 of 2021) [2023] KEELRC 445 (KLR) (20 February 2023) (Ruling)

Neutral citation: [2023] KEELRC 445 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
MISCELLANEOUS CAUSE E009 OF 2021
ON MAKAU, J
FEBRUARY 20, 2023

BETWEEN

FRANCIS KAMUNYI APPLICANT

AND

INOI FARMERS CO-OPERATIVE SOCIETY LTD RESPONDENT

RULING

1. This ruling relates to the Notice of Motion dated October 13, 2021 brought under section 27 and 28 of the *Limitation of Actions Act* and all other enabling provisions of the law. The motion seeks leave to file suit against the respondent out of time.
2. The main reasons for the delay in filing suit is because parties were negotiating settlement but failed to agree. Secondly, the applicant lacked money to file suit in time owing to loss of employment.
3. The application is opposed by the respondent vide grounds of opposition dated December 14, 2021. In brief the respondent avers that the application is misconceived, bad in law and an abuse of the court process. Further the application does not meet the threshold set out under section 22 of the *Limitation of Actions Act*.
4. I have considered the averments and the submissions by the two sides. The main issue for determination is whether leave should be granted to the applicant to file suit against the respondent out of time.
5. The cause of action herein was termination of applicant's employment on September 28, 2007 and as such it was governed by Section 4 (1) of the *Limitation of Actions Act* which limited the period for filing suit to 6 years. The said period lapsed on September 28, 2013.



6. In *Anadet Kalia Musau v Attorney General & 2 others* [2020] eKLR the Court of Appeal held that:-

“...the overriding purpose of all limitation statutes is based on the Maxim interest reipublicae ut sit finis litium, that is, in the public interest that there be an end to litigation. A party will not be permitted to prosecute stale claims.”

7. In *Devecon v Samani* [1995-1998] 1 EA p 48 the Court of Appeal stated as follows:

“...to us, the meaning of section 4(1) is clear beyond doubt. It means that no one shall have the right or power to bring, after the end of six years from the date on which a cause of action arose, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done, namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action...”

8. The foregoing binding precedents are to the effect that a court of law cannot extend the limitation period set by the statute for filing suits founded on contract, including employment contract. The court has neither jurisdiction nor discretion in such matters. Even parties cannot confer jurisdiction by consent to entertain a time barred suit. Consequently, the Application dated October 13, 2021 is incompetent and without merits and it is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 20TH DAY OF FEBRUARY, 2023.

ONESMUS N MAKAU

JUDGE

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on April 15, 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

